THE HON'BLE SRI JUSTICE N.R.L. NAGESWARA RAO

APPEAL SUIT No.1034 OF 1996

JUDGMENT:-

Defendants 3 and 4 in O.S.No.15 of 1991 on the file of the Court of the Subordinate Judge, Addanki, are the appellants herein.

2. The suit was filed by the plaintiff for recovery of arrears of market committee fees.

3. According to the case of the plaintiff, the 1st defendant was carrying business in cotton and it has to pay market fee for the years 1983-84 and 1984-85 to a tune of Rs.1,02,303.90 ps. The 2nd defendant is the President of the Society and defendants 3 and 4 are his children. The plaintiff has filed a criminal case which ended in acquittal. Thereafter, an appeal was preferred and it was also dismissed on 15.06.1988 with a liberty to the plaintiff that the plaintiff committee is not prevented from taking action according to law to recover the dues. Thereafter, the plaintiff issued a notice on 07.10.1989 and as there was no reply the suit was filed.

4. The 2nd defendant died after filing of the suit and defendants 3 and 4 were brought on record as his legal representatives. The 4th defendant filed a written statement, which was adopted by the 3rd defendant. According to them, the plaintiff failed to bring the proper representation of the 1st defendant society and therefore, the suit is bad. Defendants 3 and 4 are not necessary parties. The suit is bad by time. The suit is therefore liable to be dismissed.

5. On the basis of the above pleadings, necessary issues have been framed. The Court below after considering the evidence on record, decreed the suit of the plaintiff. Aggrieved by the said

judgment, the present appeal is filed.

6. The point that arises for consideration is whether the suit is barred by time and defendants 3 and 4 are not liable to pay the amount?

7. **POINT**:

Without going into the other contentions about the maintainability of the suit without bringing representatives of the 1st defendant as a party, after the death of the 2nd defendant the appeal can be disposed of on the legal aspect about the limitation, which was not properly considered by the Court. Evidently, the suit was filed on 26.12.1990. The contention of the learned counsel for the appellants is that under Section 12-B of the A.P. (Agricultural Produce and Live Stock) Markets Act, 1966, the assessment of market fee shall be within a period of three years from the expiry of the year to which the assessment relates and a notice has to be given to the assessee.

8. According to him, in this case, the claim in the suit relates to the years 1983-84 and 1984-85, consequently, the assessment for the year 1983-84 should have been made within three years i.e., before March, 1987 and for the year 1984-85, it should have been made before March, 1988. The suit was filed on 26.12.1990. The plaint does not show before initiation of the criminal proceedings any notice was given. As can be seen from the documents filed by the plaintiff, the notice Ex.A.1 was given on 30.09.1989, which is evidently beyond the period of three years for both the years 1983-84 and 1984-85. The decision reported in **S.Narender Reddy vs. Agricultural Market Committee, Jogipet, Medak District and others**[1] relied on by the learned counsel for the appellants applies to the facts of the case. Therefore, it has to be held that the claim is barred by time.

9. Accordingly, the appeal is allowed setting aside the judgment of

the Court below. No costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE N.R.L. NAGESWARA RAO

Date: 17.12.2012
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[1] 2002(3) ALD 447